IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10/08/2004

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

WRIT PETITION NO. 17829 OF 1998

Kasthuri & Sons Ltd.,
Proprietor of The Hindu,
859 & 860, Mount Road,
Chennai-600 002 rep. by
its Director. .. Petitioner

-Vs-

1. The Commissioner of Customs,
Customs House,
No.33, Rajaji Salai,
Chennai-600 001.
2. The Assistant Commissioner
of Customs, Customs House,
No.33, Rajaji Salai,
Chennai-600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.R.Krishnamoorthy,S.C.
for Mr.Vijay Narayan
For respondents : Mr.T.Gopalan,
Additional Solicitor General.

:ORDER
This writ petition has been filed by the petitioner praying to issue a writ of certiorarified Mandamus calling for the records of the second respondent in proceedings F.No.S30/1210/94-GR.5A, dated 25.10.1 998, quash the same and consequently forbear the second respondent from demanding or levying any duty in respect of the facsimile equipment imported by the petitioner under Bill of Entry No.D.813 dated 4.5.1 984.
2. The brief case of the petitioner is that the petitioner imported the Laser Press Facsimile equipment in May 1984 and the same was assessed by the Assistant Collector, customs as an item chargeable to duty under Customs Tariff heading 84.35 and the petitioner paid the duty of Rs.80,59,513.80. But according to the Assistant Collector, the above equipment is in the nature of transmission and the reception apparatus and wireless equipment and hence decided to assess the goods under item 85.15 CTA read with 68 CET since the

equipment imported was capable of working both on carrier lines and on wireless transmission and that there was a short levy of duty to the extent of Rs.38,07,255 towards the difference between the original assessment and the assessment. In that regard, show cause notice dated 6.8.1985 was issued requiring the petitioner to make his representation in writing along with evidence if any, as to why the goods should not be assessed under item 85.15 CTA read with 68 CET, and in case if the petitioner wish to be heard in person, would require to appear before the Assistant Collector on 12.8.1985 at 3.00 p.m., failing which the case would be decided based on merits without further notice. On receipt of the said show cause notice, the petitioner made his representation dated 8.8.1995 to the Assistant Collector, Customs, Chennai-1 seeking three weeks time for personal hearing.

3. Thereafter the petitioner filed Writ Petitions in W.P.Nos.8921 and 8922 of 1985 challenging the said show cause notice dated 6.8.1885 demanding payment of additional duty and an order of interim stay was granted by this Court by order dated 22.8.1985 in W.P.M.P.No.13367 of 1985 in W.P.Nos.8921 and 8922 of 1985. Thereafter, ultimately the writ petitions were dismissed by this Court on 21.1.1998 on the ground that the writ petitions were prematured. Thereafter the impugned order was passed by the respondents on 25.10.1998.

4. The present writ petition has been filed challenging the order of the respondents dated 25.10.1998 on the ground that after dismissal of the writ petitions no opportunity was given to the petitioner to put forth his objections, not even the date of hearing was intimated to the petitioner, which is in gross violation of principles of natural justice and hence the impugned order is liable to be set aside.

5. The learned Addl. Solicitor General appearing for the respondents contended that show cause notice was issued to the petitioner fixing the date of hearing on 12.8.1985. Thereafter by letter dated 14.8.19 85 the date of hearing was fixed on 29.8.1985. In that letter it is specifically stated that adequate time was granted to the petitioner postponing the date of personal hearing. Therefore, the petitioner was requested to appear for personal hearing on 29.8.1985, failing which the case would be decided based on merits without further notice. Relying upon this, the learned Solicitor General has also states that even earlier it was specifically stated that unless the petitioner appear for personal hearing, orders would be passed based on merits. Therefore, after the disposal of the writ petitions, the petitioner should have approached the respondents or should have made his objections to the demand of additional duty, but he did not do so. Therefore, there is no question of prejudice caused to the petitioner.

6. The learned Addl. Solicitor General relied on a decision in ALIGARH MUSLIM UNIVERSITY AND OTHERS v. MANSOOR ALIKHAN (2000)7 Supreme Court Cases 529) stressed his arguments on paragraphs 22, 24 and 25 wherein (in paragraph 25 it has been held by the Hon'ble Supreme Court that "this Court has consistently applied the principle of prejudice in several cases.". The learned Addl. Solicitor General has also pointed out that the above decision in paragraph 25 would squarely apply to the facts of the case in hand. Relying upon the decision the learned Addl. Solicitor General

contended that the petitioner should show prejudice caused on account of not giving opportunity to explain his case. In the affidavit of the petitioner it has not been specifically stated what prejudice that was caused to the petitioner, due to the failure to give notice of personal hearing. When there is no specific mention about the prejudice caused to the petitioner principles of natural justice cannot be bluntly applied in all cases. In this case already a specific date has been fixed and also specifically mentioned that failure to comply with the order, would give way so passing of orders on merit without any further notice. He further submits that after the disposal of the writ petitions the petitioner should have submitted his representation to the show cause notice. But he remained silent even after the writ petitions were dismissed. In these circumstances, the learned Addl. Solicitor General contended that there is no ground to quash the impugned order and the impugned order does not suffer from any illegality. On the other hand, there is laches on the part of the petitioner and hence the writ petition is liable to be dismissed.

7. In reply to the arguments, the learned senior counsel Mr.R. Krishnamoorthy submits that a perusal of the impugned order shows that additional levy of duty refers only based on the register maintained by the Customs Department. The impugned order demanding additional duty payable by the petitioner is without any order of adjudication. Even assuming that opportunity for personal hearing the show cause notice was given to the petitioner, still, it is obligatory on the part of the respondent to pass an order of adjudication. Only after such adjudication the demand can be made. Therefore, without any adjudication, merely because the register of the Customs Department shows a demand, it cannot be directed to be paid by the petitioner.

The impugned order refers as follows:-
Sub: Payment of Customs duty demand of Rs.38,07,255/- Reg.
*****
As per the duty demand register maintained by this Custom House, duty arrears of Rs.38,07,255 (Rupees thirty eight lakhs seven thousand two hundred and fifty five only) with interest at the rate of 20% from December 1995 is payable by you. You are hereby directed to make the above payment of duty arrears and interest within 10 days of receipt of this letter.
(Please note that if the amount of duty arrears and interest are not paid within the above period the department will be constrained to initiate recovery proceedings as provided under Sec.142 of the Customs Act)"

From this, it is seen that basis for this letter is only that there is a demand in the register maintained by the Customs House. There is no mention about the date on which the adjudication that the petitioner is liable to pay the additional duty of Rs.38,07,255/- (specified in the impugned order) was made. In the absence of any such adjudication, such a demand cannot be made. Therefore, inasmuch as the impugned order does not show that it is based upon any of the adjudication, the impugned order is liable to be quashed.

In the result, the writ petition succeeds and the same is allowed as prayed for.

Considering the number of years the matter is pending, both the parties agreed that they will settle of the matter within one month and also agreed to fix a date of hearing of the petitioner to appear before the respondents and submit his reasons. Accordingly, the date of hearing of the petitioner before the respondents is fixed as 30.8.2004 . The petitioner shall appear before the respondents on 30.8.2004 and submit his objections if any, failing which orders may be passed by the respondents based on merits without any further notice. The petitioner is at liberty to file his objections on or before the date of hearing.

Index :Yes
Internet:Yes
gr.

To

1. The Commissioner of Customs,
Customs House,
No.33, Rajaji Salai,
Chennai-600 001.

2. The Assistant Commissioner
of Customs, Customs House,
No.33, Rajaji Salai,
Chennai-600 001.